

AMENDED IN SENATE JUNE 15, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1506**

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Introduced by ~~Committee on Labor and Employment~~  
(~~Assembly Members Roger Hernández (Chair), Chu, Low,~~  
~~McCarty, and Thurmond~~) *Assembly Member Roger Hernández*

March 4, 2015

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An act to amend ~~Section 203.1~~ *Sections 2699 and 2699.5* of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 1506, as amended, ~~Committee on Labor and Employment~~ *Roger Hernández*, ~~Wages: theatrical employees; Labor Code Private Attorneys General Act of 2004.~~

*The Labor Code Private Attorneys General Act of 2004 authorizes an aggrieved employee to bring a civil action to recover specified civil penalties, that would otherwise be assessed and collected by the Labor and Workforce Development Agency, on behalf of the employee and other current or former employees for the violation of certain provisions affecting employees. The act provides the employer with the right to cure certain violations before the employee may bring a civil action, as specified. For other violations, the act requires the employee to follow specified procedures before bringing an action.*

*Existing law requires an employer to provide its employees with specified information regarding their wages, including, among others, the inclusive dates of the period for which the employee is paid and the name and address of the legal entity that is the employer, either semimonthly or at the time of each wage payment and provides that the*

*employer does not have the right to cure a violation of that requirement before an employee may bring a civil action under the act.*

*This bill would provide an employer with the right to cure a violation of that requirement that an employer provide its employees with the inclusive dates of the pay period and the name and address of the legal entity that is the employer before an employee may bring a civil action under the act. The bill would provide that a violation of that requirement shall only be considered cured upon a showing that the employer has provided a fully compliant, itemized wage statement to each aggrieved employee, as specified. The bill would also delete references to obsolete provisions of law.*

~~Existing law authorizes specified employees working in the entertainment industry and their employers to enter into a collective bargaining agreement to establish a time limit for payment of wages after an employee is discharged or laid off.~~

~~Existing law imposes a civil penalty on an employer who pays an employee by a check, draft, or voucher that is refused payment because it is drawn on a nonexistent account or on an account that has insufficient funds, as specified.~~

~~This bill would apply the civil penalty provision for payment of employee wages with insufficient funds to an employer who employs specified employees working in the entertainment industry.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 2699 of the Labor Code is amended to  
2     read:

3     2699. (a) Notwithstanding any other provision of law, any  
4     provision of this code that provides for a civil penalty to be  
5     assessed and collected by the Labor and Workforce Development  
6     Agency or any of its departments, divisions, commissions, boards,  
7     agencies, or employees, for a violation of this code, may, as an  
8     alternative, be recovered through a civil action brought by an  
9     aggrieved employee on behalf of himself or herself and other  
10    current or former employees pursuant to the procedures specified  
11    in Section 2699.3.

12    (b) For purposes of this part, “person” has the same meaning  
13    as defined in Section 18.

1 (c) For purposes of this part, “aggrieved employee” means any  
2 person who was employed by the alleged violator and against  
3 whom one or more of the alleged violations was committed.

4 (d) For purposes of this part, “cure” means that the employer  
5 abates each violation alleged by any aggrieved employee, the  
6 employer is in compliance with the underlying statutes as specified  
7 in the notice required by this part, and any aggrieved employee is  
8 made whole. *A violation of paragraph (6) or (8) of subdivision (a)*  
9 *of Section 226 shall only be considered cured upon a showing that*  
10 *the employer has provided a fully compliant, itemized wage*  
11 *statement to each aggrieved employee for each pay period for the*  
12 *three-year period prior to the date of the written notice sent*  
13 *pursuant to paragraph (1) of subdivision (c) of Section 2699.3.*

14 (e) (1) For purposes of this part, whenever the Labor and  
15 Workforce Development Agency, or any of its departments,  
16 divisions, commissions, boards, agencies, or employees, has  
17 discretion to assess a civil penalty, a court is authorized to exercise  
18 the same discretion, subject to the same limitations and conditions,  
19 to assess a civil penalty.

20 (2) In any action by an aggrieved employee seeking recovery  
21 of a civil penalty available under subdivision (a) or (f), a court  
22 may award a lesser amount than the maximum civil penalty amount  
23 specified by this part if, based on the facts and circumstances of  
24 the particular case, to do otherwise would result in an award that  
25 is unjust, arbitrary and oppressive, or confiscatory.

26 (f) For all provisions of this code except those for which a civil  
27 penalty is specifically provided, there is established a civil penalty  
28 for a violation of these provisions, as follows:

29 (1) If, at the time of the alleged violation, the person does not  
30 employ one or more employees, the civil penalty is five hundred  
31 dollars (\$500).

32 (2) If, at the time of the alleged violation, the person employs  
33 one or more employees, the civil penalty is one hundred dollars  
34 (\$100) for each aggrieved employee per pay period for the initial  
35 violation and two hundred dollars (\$200) for each aggrieved  
36 employee per pay period for each subsequent violation.

37 (3) If the alleged violation is a failure to act by the Labor and  
38 Workplace Development Agency, or any of its departments,  
39 divisions, commissions, boards, agencies, or employees, there shall  
40 be no civil penalty.

(g) (1) Except as provided in paragraph (2), an aggrieved employee may recover the civil penalty described in subdivision (f) in a civil action pursuant to the procedures specified in Section 2699.3 filed on behalf of himself or herself and other current or former employees against whom one or more of the alleged violations was committed. Any employee who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs. Nothing in this part shall operate to limit an employee's right to pursue or recover other remedies available under state or federal law, either separately or concurrently with an action taken under this part.

(2) No action shall be brought under this part for any violation of a posting, notice, agency reporting, or filing requirement of this code, except where the filing or reporting requirement involves mandatory payroll or workplace injury reporting.

(h) No action may be brought under this section by an aggrieved employee if the agency or any of its departments, divisions, commissions, boards, agencies, or employees, on the same facts and theories, cites a person within the timeframes set forth in Section 2699.3 for a violation of the same section or sections of the Labor Code under which the aggrieved employee is attempting to recover a civil penalty on behalf of himself or herself or others or initiates a proceeding pursuant to Section 98.3.

(i) Except as provided in subdivision (j), civil penalties recovered by aggrieved employees shall be distributed as follows: 75 percent to the Labor and Workforce Development Agency for enforcement of labor laws and education of employers and employees about their rights and responsibilities under this code, to be continuously appropriated to supplement and not supplant the funding to the agency for those purposes; and 25 percent to the aggrieved employees.

(j) Civil penalties recovered under paragraph (1) of subdivision (f) shall be distributed to the Labor and Workforce Development Agency for enforcement of labor laws and education of employers and employees about their rights and responsibilities under this code, to be continuously appropriated to supplement and not supplant the funding to the agency for those purposes.

(k) Nothing contained in this part is intended to alter or otherwise affect the exclusive remedy provided by the workers' compensation provisions of this code for liability against an

1 employer for the compensation for any injury to or death of an  
2 employee arising out of and in the course of employment.

3 (l) The superior court shall review and approve any penalties  
4 sought as part of a proposed settlement agreement pursuant to this  
5 part.

6 (m) This section shall not apply to the recovery of administrative  
7 and civil penalties in connection with the workers' compensation  
8 law as contained in Division 1 (commencing with Section 50) and  
9 Division 4 (commencing with Section 3200), including, but not  
10 limited to, Sections 129.5 and 132a.

11 (n) The agency or any of its departments, divisions,  
12 commissions, boards, or agencies may promulgate regulations to  
13 implement the provisions of this part.

14 *SEC. 2. Section 2699.5 of the Labor Code is amended to read:*

15 2699.5. The provisions of subdivision (a) of Section 2699.3  
16 apply to any alleged violation of the following provisions:  
17 subdivision (k) of Section 96, Sections 98.6, 201, 201.3, 201.5,  
18 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205,  
19 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of Section  
20 213, Sections 221, 222, 222.5, 223, and 224, *paragraphs (1) to*  
21 *(5), inclusive, (7), and (9) of* subdivision (a) of Section 226,  
22 Sections 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230.4, 230.7,  
23 230.8, and 231, subdivision (c) of Section 232, subdivision (c) of  
24 Section 232.5, Sections 233, 234, 351, 353, and 403, subdivision  
25 (b) of Section 404, Sections 432.2, 432.5, 432.7, 435, 450, 510,  
26 511, 512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850,  
27 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025,  
28 1026, 1101, 1102, 1102.5, and 1153, subdivisions (c) and (d) of  
29 Section 1174, Sections 1194, 1197, 1197.1, 1197.5, and 1198,  
30 subdivision (b) of Section 1198.3, Sections 1199, 1199.5, 1290,  
31 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301,  
32 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392,  
33 1683, and 1695, subdivision (a) of Section 1695.5, Sections  
34 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6,  
35 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, and 1700.47,  
36 ~~paragraphs (1), (2), and (3) of subdivision (a) of, and subdivision~~  
37 ~~(c) of, Section 1701.4, subdivision (a) of Section 1701.5, Sections~~  
38 ~~1701.8, 1701.10, 1701.12, 1735, 1771, 1774, 1776, 1777.5, 1811,~~  
39 1815, 2651, and 2673, subdivision (a) of Section 2673.1, Sections

1 2695.2, 2800, 2801, 2802, 2806, and 2810, subdivision (b) of  
2 Section 2929, and Sections 3095, 6310, 6311, and 6399.7.

3 ~~SECTION 1. Section 203.1 of the Labor Code is amended to~~  
4 ~~read:~~

5 ~~203.1. If an employer pays an employee in the regular course~~  
6 ~~of employment or in accordance with Section 201, 201.3, 201.5,~~  
7 ~~201.7, 201.9, or 202 any wages or fringe benefits, or both, by~~  
8 ~~check, draft or voucher, which check, draft or voucher is~~  
9 ~~subsequently refused payment because the employer or maker has~~  
10 ~~no account with the bank, institution, or person on which the~~  
11 ~~instrument is drawn, or has insufficient funds in the account upon~~  
12 ~~which the instrument is drawn at the time of its presentation, so~~  
13 ~~long as the same is presented within 30 days of receipt by the~~  
14 ~~employee of the check, draft or voucher, those wages or fringe~~  
15 ~~benefits, or both, shall continue as a penalty from the due date~~  
16 ~~thereof at the same rate until paid or until an action therefor is~~  
17 ~~commenced. However, those wages and fringe benefits shall not~~  
18 ~~continue for more than 30 days and this penalty shall not apply if~~  
19 ~~the employer can establish to the satisfaction of the Labor~~  
20 ~~Commissioner or an appropriate court of law that the violation of~~  
21 ~~this section was unintentional. This penalty also shall not apply in~~  
22 ~~any case in which an employee recovers the service charge~~  
23 ~~authorized by Section 1719 of the Civil Code in an action brought~~  
24 ~~by the employee thereunder.~~